88-734

Supreme Court, U.S.
FILED
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1988

Case No. _____

CYRIL E. SAGAN, IN BEHALF OF REGISTERED VOTERS OF THE COMMONWEALTH

Appellant,

vs.

PENNSYLVANIA PUBLIC TELEVISION NETWORK, AND ROBERT A. GLEASON, SECRETARY OF THE COMMONWEALTH, AND LEGREE S. DANIELS, COMMISSIONER OF ELECTIONS

Appellees.

ON APPEAL FROM

THE SUPREME COURT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

CYRIL E. SAGAN, Pro Se
R.D. 2
Volant, Pennsylvania 16156
(412) 530-7240

QUESTIONS PRESENTED

1. Whether a state agency can invoke federal laws to justify its tampering with a free and open statewide federal election.

2. Whether a state agency acted as public censor while alleging to act in the public interest.

3. Whether principles of equal time, equal opportunity and fairness in elections can be protected by states against definitions formulated by a federal agency.

DEFENDANTS IN THE COURT BELOW

1. Pennsylvania Public Television Network, an agency of the Commonwealth of Pennsylvania

2. Robert A. Gleason, Secretary of the Commonwealth of Pennsylvania

3. Legree S. Daniels, state Commissioner of Elections

TABLE OF AUTHORITIES

	Page
A. Statutes	
1. Federal	
28 U.S.C. § 1257(1)	1
28 U.S.C. § 1257(2)	1
47 U.S.C. § 312(2)	1
47 U.S.C. § 315(a)	1,4,5,6,8
2. Pennsylvania	
25 P.S. § 3241(b)	1,4,5
25 P.S. § 3260(2)	4,7
42 P.S. § 764(2)	4
71 P.S. § 1188	4,5
P.L. 1075, No. 329, 71 P.S. § 1188	1,4,5
Pa. Code, Title 14 Ch. 174 § 174.6(a)	4,7
B. Constitutional Provisions	
1. Federal	
Article I, Sect. 4, Cl. 2	2,4
Article I, Sect. 5, Cl. 1	4
Article IV, Sect. 2	2,4
Amendment I	2,4

Page

Amendment IX 2,4

2. Pennsylvania

Article I

Section 5 4,8

Section 7 4

Section 11 4,8

Section 20 4

Section 25 4

Cases

Haines v. Kerner, 404 U.S. 519 92 S.Ct. 594, 30 LE 652 (1972) 2

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	1
QUESTIONS PRESENTED	2
CONSTITUTIONAL AND STATUTORY PROVISIONS	3
STATEMENT OF THE CASE	6
THE QUESTIONS ARE SUBSTANTIAL	12

OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania, dated July 28, 1988, is not reported but is set forth in Appendix A. The opinion of the Commonwealth Court of Pennsylvania is reported at 104 Pa. Commw. Ct. 601 522 A.2d 191 (1987) and is set forth in Appendix C.

JURISDICTION

Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1257(1) and § 1257(2) and draws into question the validity of the lower courts' application of 47 U.S.C. § 315(a), the state of Pennsylvania's P.L. 1075, No. 329, 71 P.S. §1188 on grounds that they are repugnant to the Constitution of the United States and laws. The affirmation of judgment of the Commonwealth Court of Pennsylvania by the Supreme Court of Pennsylvania constitutes a decision contradicting validity of statutes

challenged. The decision of the Pennsylvania Supreme Court is final,ruling that appellant's rights were not protected under Articles I and IV and Amendments I and IX of the United States Constitution or by Article I of the Pennsylvania Constitution.[1]

QUESTIONS PRESENTED

1. Whether a state agency can invoke federal laws to justify its tampering with a free and open statewide federal election.

2. Whether a state agency acted as public censor while alleging to act in the public interest.

3. Whether principles of equal time, equal opportunity and fairness in elections can be protected by states against definitions formulated by a federal agency.

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1. Attention of this Court is called to its decision in Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 LE 652 (1972) regarding pro se litigants.

CONSTITUTIONAL AND STATUTORY PROVISIONS

A. Constitutional Provisions

1. Article I, Section 4, Clause 1

> "The times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof..."

2. Article I, Section 5, Clause 1

> "Each house shall be the judge of the elections, returns and qualifications of its own members..."

3. Article IV, Section2, Clause 2

> "The citizens of each state shall be entitled to all privileges and immunities of citizens of several states."

4. Amendment I

> "Congress shall make no law respecting an establishment of religion,or phohibiting the free exercise thereof, or abridging the freedom of speech, or of the prss; or the right of the people to peaceably assemble for a redress of grievances."

5. Amendment IX

> "The enumeration in the Constitution, of certain rights, shall not be con-

strued to deny or disparage others retained by the people."

B. Constitutional Provisions-Pennsylvania

6. Article I, Section 5

"Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

7. Article I, Section 7

"...the free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty..."

8. Article I, Section 11

"...Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the legislature may by law direct."

9. Article I, Section 20

"Citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes by petition, address or remonstrance."

10. Article I, Section 25

"To guard against transgressors of the

high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate."

STATEMENT OF THE CASE

Appellant was a legally qualified candidate for United States Senator in the May 20, 1986 Pennsylvania primary election. Pennsylvania Public Television Network (PPTN) funded a planned statewide television debate between Democratic senatorial candidates for May 12, 1986. The debate was aired by all public television studios in the state on May 13, 1986. Though a Democrat and a state recognized senatorial candidate himself, the appellant was excluded from participation or equivalent television access to Pennsylvania voters.

On September 11, 1986 appellant filed a complaint in the Commonwealth Court of Pennsylvania alleging malicious acts and process to deny him and voters of Pennsylvania rights protected by the constitutions of Pennsylvania and the United States. This lower court dismissed the complaint by asserting it had no juris-

diction under 47 U.S.C. § 315(a) of the Communications Act of 1934. The appellant claimed the lower court could assume jurisdiction not only under Section 315 but also under state and federal constitutions and laws. Articles I and IV and Amendments I and IX of the United States Constitution; Article I, Sections 5, 7, 11, 20, and 25 of the Pennsylvania Constitution; 47 U.S.C § 315(a), 47 U.S.C. § 312(a)(7); 25 P.S. § 3241(b), 25 P.S.§3260(2), 42 P.S. § 764(2), Act of November 20, 1968, P.L. 1075, 71 P.S. § 1188.3, Pa. Code, Title 14 Ch. 174 § 174.6(a)

Appellant claimed that even § 315 gave the lower court grounds to determine that PPTN violated Federal Communications Commission regulations on the basis that PPTN and the state public television stations it supported was devoid of good faith in sponsoring television exposure for only selected candidates for federal office and

by demonstrating favoritism toward those selected candidates.

The Commonwealth Court of Pennsylvania failed to adequately consider possible violations to Section 315 or relevant constitutional and statutory provisions. The lower court claimed that Section 315 deprived it of jurisdiction (See Appendix C) and the Supreme Court of Pennsylvania agreed (See Appendix A).

The Pa. Supreme Court erred in agreeing with the Commw. Court's decision to restrict coverage of the complaint to narrow limits of Section 315. It failed to consider the important qualifying factors of good faith and favoritism in Section 315. It allowed the advancement of selected candidates and censored the appellant. Act of November 20, 1968, P.L. 1075, No. 329, 71 P.S. § 1188.3 makes it clear that PPTN "...shall not be miused for political or other propaganda purposes

contrary to the Federal Constitution or to the Constitution of the Commonwealth of Pennsylvania (Emphasis added)..." The has no privilege to provide advantages to some candidates and not to another.

The Commw. Court, with Pa. Supreme Court in agreement, admitted the propriety in naming the appellees as defendants when it identified the planned debate as "... Pensylvania Public Television Network's (PPTN's) debate..." (Appendix C, p. 3), and then again, "The PPTN Democratic Senatorial Debate..." (Appendix C, p. 4). Section 315 gives no rights to PPTN to sponsor a debate, for that exemption under F.C.C. regulations belongs only to broadcasters. The appellant did not name any broadcaster in his complaint. He named PPTN, and properly so as the admission of the Pennsylvania courts show. While appellees claim exemption under Section 315 when they are not so entitled the appellant justly charges appellees with

favoritism, lack of good faith and unfair treatment of the appellant as a legally qualified candidate by PPTN, an agency of the state which preferentially spent public monies on two senatorial candidates but denied any support to the appellant. Such partial funding amounts to political contribution and violates the Pa. Code, Title 14 Ch. 174 § 174.6(a) wherein it is stated, "...the term 'Political Contribution' shall be define as a donation of money or other valuable to a candidate for nomination or election...for the purpose of defraying primary or election expenses ...(Emphasis added)". Candidate exposure is the object in election campaign and so the two preferentailly selected senatorial candidates were provided effective and expensive exposure free of charge. 25 P.S. § 3241(b) further demonstrates that two candidates were granted unfair favoritism with unbudgeted 'political contribution'.

The lower court disregarded consideration of constitutional grounds for controlling elections. The Pennsylvania Constitution states:

> Article I, Section 5
> "Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."
>
> Article I, Section 11
> "...suits may be brought against the Commonwealth in such manner, in such courts in such cases as the legislature may by law direct."

By failing to apply Pennsylvania constitutional and statutory protections and by misapplying Section 315, the lower court failed to act in the public interest to protect a free and open election. Its failure includes the preferential support of selected candidates but not one excluded from common public funds. Instead, it suppressed an election and it, therefore, suppressed vitality of the election process.

THE QUESTIONS ARE SUBSTANTIAL

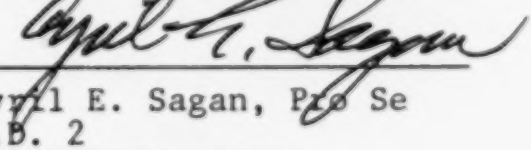
The issues raised in this case are far-reaching and are fundamental to hallowed free and open elections. The appellees assert that a federal agency acting under congressional mandate has exclusive control of the election process where through modern communication systems. While technology continues to advance communications to greater and greater heights government must be used fairly as a conduit for all candidates seeking the public trust. Federal and state actions must not be permitted to chip away at the basic rights of citizens, particularly when it comes to making intelligent choices among political candidates. Neither should governmental agencies be permitted to act as quasi-official censors of the people's right to know, including the right to know their candidates.

The decision of the Pennsylvania

Supreme Court must not place unconstitutional restraints which would preclude the broadest appreciation by the people of public issues and which would interfere with their ability to make the most intelligent choices among candidates who seek to serve them.

Appellant prays that this Court will not allow such narrow application of federal regulations that would elevate them to a position of supremacy over constitutional protections. And, therefore, the appellant asks that the decision of the Pennsylvania Supreme Court be reversed.

Respectfully submitted,



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AFFIDAVIT OF SERVICE

I hereby certify that I have prepared this appeal and that I have forwarded three true and correct copies and forwarded them to counsel for the appellees at the following address by prepaid first-class mail.

Joseph S. Sabadish
Deputy Attorney General
Office fo the Attorney General
15th Floor
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_____

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SUBSCRIBED and SWORN to

before me this _____day

of _____, 1988.

_____

Notary Public

VERIFICATION

I, Cyril E. Sagan, being duly sworn, certify that I have prepared this appeal, and that the statements contained herein are true and correct to the best of my knowledge.

_____

Cyril E. Sagan, Pro Se
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Volant, PA 16156
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SUBSCRIBED and SWORN to

before me this _____day

of _____, 1988

_____

Notary Public

APPENDIX

[J-47-1988]

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CYRIL E. SAGAN, in behalf of Registered Voters of the Commonwealth	No. 33 W.D. Appeal Dkt. 1987
v.	Appeal from the order of the Commonwealth Court of Pennsylvania, entered March 13, 1987, at No. 2734 C.D. 1986.
PENNSYLVANIA PUBLIC TELEVISION NETWORK, and ROBERT A. GLEASON, Secretary of the Commonwealth, and LEGREE S. DANIELS, Commissioner of Elections	104 Pa. Commw. 601 522 A.2d 191 (1987)
Appellees	ARGUED: March 8, 1988
APPEAL OF CYRIL E. SAGAN	

OPINION OF THE COURT

JUSTICE STOUT FILED: JULY 28, 1988

Cyril E. Sagan, a legally qualified candidate for the United States Senate in the May 20, 1986, Pennsylvania primary election, filed, in the Commonwealth Court of Pennsylvania, a pro se "Complaint for Malicious Acts and Malicious Process to Knowingly and Wilfully Deny Plaintiff and Voters of the Commonwealth Their Rights as

Set forth Under Pennsylvania Statutes and The Constitutions of Pennsylvania and of the United States of America".[1] He complained of his exclusion from a televised debate of candidates, aired over public television stations, in which two other candidates appeared. Appellant named as defendants the Pennsylvania Public Television Network, Robert A. Gleason, Secretary of the Commonwealth, and Legree S. Daniels, Commissioner of Elections.

Sagan sought injunctive relief[2] and monetary damages.[3] The defendants filed preliminary objections, one of which challenged the jurisdiction of the Commonwealth Court. That court viewed Sagan's

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1. This Court has exclusive jurisdiction of appeals from final orders of the Commonwealth Court entered in any matter which was originally commenced in that court. 42 Pa. Cons. Stat. Ann. §723(a) (Purdon 1981 & Supp. 1987).

complaint as being based on alleged violations of the "equal time"[4] and "fairness"

2. The issue of injunctive relief is moot. We decide the case, however, because the issue is of great public importance and is likely to recur. See Wortex Mills, Inc. v. Textile Workers Union, 369 Pa. 359, 85 A.2d 851 (1952); Conway v. Wilburn, 87 Pa. Commw. 611, 488 A.2d 92 (1985).

3. The "equal opportunities" provision of The Communications Act of 1934, 47 U.S.C. §315(a)(1982), see infra, does not give rise to a cause of action for damages either under common law or the (sic) under The Communications Act itself. Daly v. Columbia Broadcasting Co., Inc., 309 F. 2d 83 (7th Cir. 1962); Gordon v. National Broadcasting Co., 287 F. Supp. (D.C.N.Y. 1968); Crommelin v. Capitol Broadcasting Co., 280 Ala. 472, 195 So. 2d 524 (1967).

4. "Equal time" is a misnomer. The correct designation is "equal opportunities." See The Law of Political Broadcasting and Cablecasting, 42 Fed. Reg. 36342, 36369-72, 69 F.C.C. 2d 2209, 2260-62 (1978).

doctrines of section 315 of The Communications Act of 1934, 47 U.S.C. §315 (1982), and, in a per curiam opinion, sustained the preliminary objection to its jurisdiction and dismissed the complaint. __Pa. Commw. __, 522 A.2d 191 (1987). This appeal followed. We affirm.

In deciding this jurisdictional question we have reviewed the pertinent legislation: (1) The Communications Act of 1934, 47 U.S.C. §§151-610 (1982); and particularly (2) Section 315 of that Act, which popularly is known as the Equal Time Act; (3) Sections 396-399 of The Communications Act, popularly known as the Federal Public Broadcasting Act of 1967, which created the Corporation for Public Broadcasting, a funding mechanism for non-commercial broadcasting; and (4) 1962 Pa. Laws 329, 71 Pa. Stat. Ann. §1188.1-.4 (Purdon Supp. 1987), which established the Pennsylvania Public Television Network

Commission.

The Communications Act of 1934 established the Federal Communications Commission, a federal regulatory agency that controls and licenses commercial and educational broadcasting. Section 315 of that Act is the source of the "equal opportunities" and the "fairness" doctrines.[5] The "equal opportunities" doctrine is set

5. The fairness doctrine is not involved in this case. The fairness doctrine deals with controversial public issues, whereas the equal opportunities doctrine refers to persons (candidates). The fairness doctrine does not require "equal time." Rather it requires that the broadcaster devote a reasonable amount of time to the discussion of the most important issues in the geographic area, and if it presents one side of such an issue, it give reasonable opportunity for presenting contrasting views on that issue. See Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367, 377 (1969). For a discussion comparing and contrasting the two doctrines, see The Law of Political Broadcasting and Cablecasting, 43 Fed. Reg. 36342, 36390-91, 69 F.C.C. 2d 2209, 2300-02 (1978).

forth in section 315(a) which states, in relevant part, that:

> If ny licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: Provided, That such licensee shall have no power of censorship over the material broadcast. . . .

47 U.S.C. 315(a) (1982) (emphasis added).

The Act forbids discrimination among candidates insofar as rates, facilities, practices, or services rendered. Paulsen v. F.C.C., 491 F.2d 887 (9th Cir. 1974). The Act does not require a station to sell or give a candidate any particular time period. The station must, however, make periods that normall have comparable audiences to competing candidates upon request.

Rules and regulations that are promulgated under The Communications Act of 1934 establish the method of enforcement of alleged violations of the Act. The Federal

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Communications Commission periodically has published Public Notices containing recommended formal complaint procedures under section 316,[6] as well as procedures for formal requests for Commission action. See 47 C.F.R. §1.41 (1987). Moreover, Congress has specified remedies for violations of the Act. Section 312(a)(7) of The Communications Act provides administ-

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6. See Generally The Law of Political Broadcasting and Cablecasting, 43 Fed. Reg. 36342, 69 F.C.C.2d 2209 (1987). Section D of this Primer gives instructions on "How to File a Complaint," and subsection (4) instructs that "When the complainant is seeking 'equal opportunity,' he or she should give the dates of prior broadcasts or cable originations, if any, by his or her opponents, the date on which the request for equal opportunities was made to the station or cable operator, and the reasons the station or cable operator gave for refusing the request." Id. at 36344, 69 F.C.C.2d at 2213-14. See also Use of Broadcast Facilities by Candidates for Public Office, 24 F.C.C.2d 832 (1970); Use of Broadcast Facilities by Candidates For Public Office, 3 F.C.C.2d 463 (1966).

rative sanctions for violation of Section 315. It reads:

> (a) The Commission may revoke any station license or construction permit...
>
> (7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

47 U.S.C. §312(a)(7) (1982). In addition to the administrative sanctions, Congress provided that an injured party may apply to the appropriate district court for the enforcement of a Commission order other than for the payment of money. Id. §401.

In conjunction with this legislative scheme, Congress passed The Public Broadcasting Act of 1967, 47 U.S.C. §§396-399 (1982), which amended The Communications Act of 1934, and authorized the creation of the Corporation for Public Broadcasting, "a nonprofit corporation...which will not be an agency or establishment of the United States Government," as a funding

mechanism for virtually all activities comprising noncommercial broadcasting. Id.[7] In response to the passage of that Act, the Pennsylvania legislature established in 1968 The Television Network Commission as an independent commission "to apply for, receive and distribute Federal funds, State funds and public or private funds from any source whatsoever, and to serve as a coordination agency in connection with those funds which are available through the Federal Public Broadcasting Act of 1967 and other Federal legislation now or hereinafter enacted." 71 Pa. Cons. Stat. Ann. §1188.3(5) (Purdon Supp. 1987)

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7. For an exhaustive discussion of the construction and application of the Federal Public Broadcasting Act of 1967, 47 U.S.C. §396-399 (1982), albeit with respect to controlling content of public television programs, see Annotation, Construction and Application of Public Broadcasting Act of 1967 as amended (47 USCS §§396 et seq.) with Respect to Controlling Content of Public Television Programs, 44 A.L.R. Fed. 350 (1979).

(footnote omitted). It also was empowered "to apply to the Federal Communications Commission and other Federal agencies for such licences necessary to operate and maintain such a network." Id. §1188.3(6).

Cases interpreting both the "equal opportunities" and the "fairness" provisions of section 315 agree that federal law is preemptive,[8] that private rights of action are not part of the machinery devised

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8. The law of preemption is summarized in Louisiana Pub. Serv. Comm'n v. F.C.C.,476 U.S. 355 (1986):

> The Supremacy Clause of Art. VI of the Constitution provides Congress with the power to pre-empt state law. Pre-emption occurs when Congress, in enacting a federal statute, expresses a clear intent to pre-empt state law,...when there is outright or actual conflict between federal and state law,...where compliance with both federal and state law is in effect physically impossible,...where there is implicit in federal law a barrier to state regulation,...where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for States to supplement federal law, ...or where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress.

by Congress for control over the activities of the Corporation for Public Broadcasting, and that enforcement of the statute and vindication of the public interest are vested in the Federal Communications Commission. See Belluso v. Turner Comm. Corp., 633 F.2d 393, 396 (5th Cir. 1980); Network Project v. Corporation for Public Broadcasting, 561 F.2d 963, 972 (D.C. Cir. 1977), cert. denied, 434 U.S. 1068 (1978); Ahmad v. Levi, 414 F. Supp. 597, 603 (E.D. Pa. 1976).

Belluso, supra, is instructive as to the purpose of The Communications Act, the rules and regulations to achieve that

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Pre-emption may result not only from action taken by Congress itself; a federal agency within the scope of its congressionally delegated authority may pre-empt state regulation.
Id. at 368-69 (citations omitted)(emphasis added). See also KVUE, Inc. & Austin Broadcasting Corp. v. Moore, 709 F.2d 922 (5th Cir. 1983), aff'd, 465 U.S. 1092 (1983).

purpose,[9] administrative sanctions, and the role of the courts in enforcement of decisions. There it is written:

> The purpose of the 1934 Act "was to protect the public interest in communications,"...by formulating "aunified and comprehensive regulatory system for the industry..." To achieve these goals, Congress created the Federal Communications Commission and granted it broad regulatory authority. The Commission was empowered to prescribe rules and regulations in furtherance of the Act generally,...and to enforce compliance therewith through various administrative sanctions... The role of the courts was limited to review and enforcement of Commission decisions and orders under an abuse of discretion standard... Though the Act has been amended on several occasions since 1934, these amendments have in no way diminished either the central role of the Commission in enforcing the Act or its powere thereunder.

633 F.2d at 396 (emphases added). See also Kennedy for President Comm. v. F.C.C., 636 F.2d 432 (D.C. Cir. 1980); Ackerman v.

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9. "Federal regulations have no less preemptive effect than federal statutes." Capitol Cities Cable, Inc., v. Crisp, 467 U.S. 691, 699 (1984) (quoting Fidelity Fed. Sav. & Loan Ass'n v. De La Questa, 458 U.S. 141, 153 (1982)).

Columbia Broadcasting Sys., 301 F. Supp. 628 (S.D.N.Y. 1969).

Congress has legislated comprehensively in the area of political broadcasting. It established the Federal Communications Commission, which has provided that a complainnat seeking redress for denial of equal opportunities should complain to that Commission. Congress has provided for administrative sanctions and judicial enforcement of the Commission's orders. Appellant's complaint seeking injunctive relief and damages in the Commonwealth Court, against the Pennsylvania Television Network Commission, the Secretary of the Commonwealth and the Commissioner of Elections for alleged malicious acts and malicious process must fade when viewed in the bright light of this federal legislative plan. It was brought in the wrong forum, against the wrong defendants,[10] and partially sought the wrong relief.

The order of the Commonwealth Court is affirmed.

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10. The Television Network Commission is not a licensee but an independent agency to receive and distribute funds. Section 153(c) of The Communications Act defines a licensee as "the holder of a radio station license granted or continued in force under authority of this Chapter." 47 U.S.C. §153(c)(1982).

SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CYRIL E. SAGAN, in behalf of Registered Voters of the Commonwealth	:	No. 33 W.D. Appeal Docket
v.	:	
PENNSYLVANIA PUBLIC TELEVISION NETWORK, ROBERT A. GLEASON, Secretary of the Commonwealth, and LEGREE S. DANIELS, Commissioner of Elections	:	Appeal from the Order of the Commonwealth Court of Pennsylvania, entered March 13, 1987, at No. 2734 C.D. 1986.
Appeal of CYRIL E. SAGAN	:	104 Pa. Commw. 601 522 A.2d 191 (1987)

ARGUED: March 8, 1988

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the COMMONWEALTH COURT OF PENNSYLVANIA be, and the same is, hereby, AFFIRMED.

_____

Irma T. Gardner
Deputy Prothonotary

DATED: July 28, 1988

CYRIL E. SAGAN, in behalf of Registered Voters of the Commonwealth, Petitioner	:	IN THE COMMONWEALTH COURT OF PENNSYLVANIA
v.	:	
PENNSYLVANIA PUBLIC TELEVISION NETWORK and ROBERT A. GLEASON, Secretary of the Commonwealth and LEGREE S. DANIELS, Commissioner of Elections, Respondents	:	No. 2734 C.D. 1986

BEFORE: HONORABLE DAVID W. CRAIG, Judge
HONORABLE MADALINE PALLADINO, Judge
HONORABLE ALEXANDER F. BARBIERI, Senior Judge

SUBMITTED ON BRIEFS: January 5, 1987

PER CURIAM Filed: March 13, 1987

Petitioner, Cyril E. Sagan, commenced an action in our original jurisdiction[1] on behalf of himself and 'the registered voters of the Commonwealth." Sagan contends in his suit that the respondents violated federal and state and statutory and constitutional provisions when he was

excluded from a televised debate of candidates for the Democratic nomination for the United States Senate in the May 20, 1986 primary election which was aired over public television stations on May 13, 1986.[3] In his suit, he seeks both injunctive relief and monetary damages. The respondents have filed preliminary objections challenging this Court's jurisdiction, service, standing, and a demurrer. It is the respondents' preliminary objections which are before the Court at this time.

We address first the respondents' objection to our jurisdiction over this matter. Viewing Sagan's complaint, we are constrained to agree with respondents that his complaint is based upon the respondents' alleged violation of the "equal time" and "fairness" doctrines of Section 315 of the Communications Act of 1934, 47 U.S.C. §315. Sagan alleges he was damaged, as were the

voters of the Commonwealth, by his exclusion from the Democratic Senatorial debate on May 13, 1986. The law is clear that violations of the 'equal time" or "fairness" doctrines of 47 U.S.C. §315(a) are exclusively within the jurisdiction of the Federal Communications Commission (FCC). See Ahmad v. Levy, 414 F. Supp. 597 (E.D. Pa. 1976); Ackerman v. Columbia Broadcasting System, Inc., 301 F. Supp. 628 (S.D.N.Y. 1969). Section 315 creates no private rights nor authorizes any suits for damages its violations. The sole function of the judiciary is to review final orders of the FCC in accordance with the statutory scheme. Ackerman, 301 F. Supp. at 631. Therefore, this Court is without jurisdiction to entertain Sagan's claim based on an alleged violation of 47 U.S.C. §315.

Sagan's attempt to characterize Pennsylvania Public Television Network's

(PPTN's) debate between the two prime Democratic Senatorial candidates as a "political contribution" is unpersuasive. The PPTN Democratic Senatorial Debate clearly falls within the exemption from the equal time doctrine for on-the-spot coverage of a bona fide news event since the debate was broadcast for its newsworthiness and was not intended to advance the candidacy of any one individual candidate. See Chisholm v. FCC, 538 F.2d (D.C. Cir. 1976), cert. denied, 429 U.S. 890 (1976). As such, the PPTN debate can in no way be construed as a political contribution of free television air time as Sagan contends. Thus viewed, Sagan's basic complaint, after all of his obfuscations are stripped away, is with the scope of the "equal time" and "fairness" doctrines embodied in 47 U.S.C. §315(a). We must, therefore, sustain the respondents' preliminary objection as to our jurisdict-

ion and dismiss Sagan's complaint.

In view of our determination that we lack jurisdiction over this matter, we need not reach the respondent's remaining preliminary objections.

Judge Palladino recuses.

FOOTNOTES

[1]42 Pa. C.S. §761.

[2]The named respondents are the Pennsylvania Public Television Network (PPTN); Robert A. Gleason, Secretary of the Commonwealth; and Legree S. Daniels, Commissioner of Elections.

[3]The televised debate was between United States Representative Robert Edgar and Pennsylvania Auditor General Don Bailey.

CYRIL E. SAGAN, in behalf of Registered Voters of the Commonwealth,	:	
Petitioner	:	IN THE COMMONWEALTH COURT OF PENNSYLVANIA
v.	:	
PENNSYLVANIA PUBLIC TELEVISION NETWORK and ROBERT A. GLEASON, Secretary of the Commonwealth and LEGREE S. DANIELS, Commissioner of Elections,	:	
Respondents	:	No. 2734 C.D. 1986

ORDER

PER CURIAM

NOW, March 13, 1987, upon consideration of the Preliminary Objections of the Respondents, the Preliminary Objection challenging this Court's jurisdiction is sustained and Petitioner's complaint is dismissed.

CERTIFIED FROM THE RECORD
AND ORDER EXIT

March 13, 1987

/s/ C R Hostutler

Deputy Prothonotary-
Chief Clerk